

Amendment and Response  
Ser. No. 09/707,335

### REMARKS

The foregoing amendment amends Claims 1-4, 11, 14, 38-40, 44-47 and 62 and cancels Claims 25-37 without prejudice to pursue Claims 25-37 in a continuation application. The foregoing amendments are supported by at least the following sections of the specification: page 4, line 18 – page 6, line 7; page 19, line 15 – page 21, line 8; page 30, line 19 – page 31, line 3; page 34, line 1 – page 36, line 22. Upon entry of the foregoing amendment, Claims 1-24 and 38-64 are pending the application with Claims 1, 11, 16, 38, 44, 48 and 62 being independent claims.

In rejecting Claims 25-37, the Examiner took official notice of many facts. It is submitted that the facts asserted to be well-known are not “capable of instant and unquestionable demonstration as being well-known.” MPEP 2144.03. The cancellation of Claims 25-37 is not an acquiescence of the Examiner’s position that certain facts are well-known. These claims are canceled without prejudice to challenge the sufficiency of the official Notice taken by the Examiner.

### Neither *Burfeind* nor *Rowe* Describe, Teach or Suggest the Invention of Claims 1, 11, 38 and 44

The Examiner rejected Claim 1 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,360,172 to *Burfeind*. In addition, the Examiner rejected Claims 11, 38 and 44 under 35 U.S.C. 103(a) as being unpatentable over *Burfeind* in view of U.S. Publication No. US 2001/0003846 to *Rowe et al.* (“*Rowe*”). Claims 1, 11, 38 and 44 have been amended to clarify that the real-time weather data that is associated with the consumer’s device is used to select data, such as an advertisement, recommendation or command, that is delivered to the consumer’s device. Neither *Burfeind* nor *Rowe* describes using real-time local weather conditions to select data for delivery to a consumer.

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Although *Burfeind* describes the delivery of personalized natural phenomenological data, such as weather data based on the personal preferences of a subscriber, those personal preferences are static and do not reflect the real-time weather conditions associated with the location of the subscriber's device. The personal preferences data or profile data provided by the subscriber is used as a guide to select or filter natural phenomenological data that is pertinent to the subscriber. Column 6, lines 32-36. The personal preferences data includes information such as the subscriber's activities, locations of the activities, schedule of the activities and sensitivities of the subscriber. Column 15, lines 50-54.

Although *Rowe* describes a distribution system that supports the delivery of local advertisements, the local advertisements are not selected based on detecting real-time weather conditions. The local advertisements are provided in accordance with a contract with the advertiser that was written and executed long before the advertisement is aired. Although *Rowe* describes that it would be possible to provide an advertisement for a tropical vacation during a winter weather program, such programming would only be possible based on expected, not actual weather conditions. For example, *Rowe* would allow an advertiser to contract to have an advertisement run during a February weather report in the northeast, but would not be able to guarantee the advertiser that at the time the advertisement is run that the weather is particularly snowy or cold. See FIG. 3a and accompanying text.

*Rowe* describes that a central system generates and manages the programming schedules which include local advertisements. Paragraph [1033]. The central system determines programming based on time slots and location. *Rowe* describes that the central system provides zoned programming that is based on the geographic location of the remote devices. However, the zoned programming does not vary based on the real-time weather conditions at the remote locations. Thus, neither *Burfeind* nor *Rowe* describe detecting actual weather conditions that exist at a location associated

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with the consumer's device and then selecting data based on those detected weather conditions.

**Burfeind does not Describe, Teach or Suggest the Invention of Claim 16**

The Examiner rejected Claim 16 under 35 U.S.C. § 103(a) as being unpatentable over *Burfeind* in view of "well-known Online Associate and Affiliate programs, methods and principles." Claim 16 requires determining whether a request for weather information originating from a consumer triggers a partner relationship and if the request triggers one of the partner relationships, then transmitting information to the consumer that is delivered in accordance with rules defined by the partner relationship. *Burfeind* only describes the use of a subscriber preference to filter natural phenomenological data. *Burfeind* does not describe the use of a partner relationship and thus does not describe that information is delivered in accordance with rules defined by a partner relationship if that partner relationship has been triggered by the request from the consumer, as required by Claim 16. The content of the data provided by the system described by *Burfeind* is solely determined by the subscriber preferences. No other information is used to filter the natural phenomenological data.

In rejecting Claim 16, the Examiner relied on "well-known Online Associate and Affiliate programs, methods and principles." No references to documentary evidence were provided in the Office Action in connection with the rejection of Claim 16. It is submitted that the reliance upon "well-known Online Associate and Affiliate programs, methods and principles" is improper because the elements of these programs relied upon by the Examiner are not "capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03. Moreover, it is submitted that it is unclear as to what elements recited in Claim 16 the Examiner alleges are

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described by such "well-known Online Associate and Affiliate programs, methods and principles."

**Burfeind Does not Describe, Teach or Suggest the Invention of Claim 62**

The Examiner rejected Claim 62 alleging that all the elements of the claim are disclosed by *Burfeind*. The foregoing amendment to Claim 62 clarifies that the weather information presented to the consumer is customized based on the consumer's preferences as to types of weather information, arrangement of weather information and consumer's device. *Burfeind* does not enable a subscriber to specify the arrangement of the desired weather information, as required by Claim 62. *Burfeind* describes that the subscriber's personal preferences are used to filter natural phenomenological information to obtain a text string. *See, e.g.*, column 7, lines 18-26. Although the final version of the text string may be varied based on the type of device that the subscriber uses to receive the data, the subscriber is not permitted to specify an arrangement of the data delivered. For example, *Burfeind* only describes that the text string may be provided as a voice-synthesized audio stream, if the subscriber is using a cell phone, or as an email file if the user is using a computer. Column 7, lines 26-31. Thus, *Burfeind* does not describe each and every element of Claim 62 because *Burfeind* does not describe that a consumer is permitted to specify an arrangement of the information that is presented to the subscriber.

**Burfeind Does not Describe, Teach or Suggest the Invention of Claim 48**

The Examiner rejected Claim 48 under 35 U.S.C. § 103(a) as being unpatentable over *Burfeind* and in view of other well-known techniques. No references to documentary evidence were provided in the Office Action in connection with the rejection of Claim 48. It is submitted that the reliance upon these techniques is improper because the techniques are not "capable of instant and questionable

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demonstration as being well-known." MPEP 2144.03. In addition, it is unclear as to what elements the Examiner has alleged that *Burfeind* describes and what elements the Examiner alleges are well-known.

**Dependent Claims**

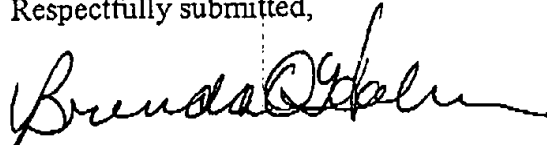
Claims 2-10, 12-15, 17-24, 39-43, 45-47, 49-61 and 63-64 depend from independent Claims 1, 11, 16, 38, 44 48 and 62 respectively. The remarks made above with respect to the independent claims are equally applicable to the dependent claims. In rejecting the dependent claims, the Examiner took official notice of many facts. It is submitted that the facts asserted to be well-known are not "capable of instant and unquestionable demonstration as being well-known." MPEP 2144.03. In particular, it is submitted that the references cited by the Examiner do not describe selecting data based on real-time or actual weather conditions and that any fact asserted by the Examiner to be well-known related to the selection of data based on real-time weather conditions is not supported and it is requested that documentary evidence be provided to support the Examiner's allegations.

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**CONCLUSION**

In light of the foregoing, it is respectfully submitted that the pending claims are allowable and a notice of allowance is respectfully requested. If there are any issues that can be resolved via a telephone conference, the Examiner is invited to contact Brenda Holmes at 404.685.6799.

Respectfully submitted,



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